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## EVALUATOR MANUAL TRANSMITTAL SHEET

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<b><u>Distribution:</u></b>	<b><u>Transmittal No.</u></b> <b>09RCFE-02</b>
<input type="checkbox"/> All Child Care Evaluator Manual Holders <input checked="" type="checkbox"/> All Residential Care Evaluator Manual Holders <input type="checkbox"/> All Evaluator Manual Holders	<b><u>Date Issued</u></b>  October 2009

**Subject:**

Evaluation Manual for Residential Care Facilities for the Elderly  
Section 87705 Care of Persons with Dementia

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**Reason for Change:**

This revision was necessary to update section 87705 and to reformat the sections that follow.

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**Filing Instructions:**

REMOVE – Pages 111 through 119

INSERT – Pages 111 through 135

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**Approved:**

*Original signed by Thomas Stahl*

*10/15/09*

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**THOMAS STAHL** Chief  
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**87633      HOSPICE CARE FOR TERMINALLY ILL RESIDENTS (Continued)      87633****POLICY (continued)**

2. The licensee must notify the local fire authority, as required by Health and Safety Code Sections 1569.72 (f) and 1569.73 (h), within forty-eight (48) hours of admitting or retaining a resident who is bedridden, regardless of the length of time the resident will be bedridden.

\* These requirements apply even if a resident is on hospice.

**PROCEDURE**

Confirm that the hospice care plan reflects care that ensures the resident's needs are being met. If a resident's needs are not being met, either the licensee or the Department can require the resident to be relocated. Relocation is related to the resident's needs, not to bedridden status.

**87638      RESIDENT REQUEST FOR REVIEW OF HEALTH CONDITION      87638  
RELOCATION ORDER****PROCEDURE**

- (a) See Reference Material – Health and Behavior Section 5-1000.

**87640      TRANSFER DEPENDENCY      87640**

Repealed by Manual Letter No. CCL-92-10, effective 7/21/92.

**ARTICLE 12. DEMENTIA****87705      CARE OF PERSONS WITH DEMENTIA      87705****(a)****POLICY**

Some residents may exhibit symptoms of dementia, which is defined in California Code of Regulations, Title 22, section 87101(d), but may not have a medical diagnosis of dementia. Likewise, residents may have an inaccurate diagnosis of dementia. A resident may have been diagnosed by a physician to have "mild cognitive impairment", as defined in California Code of Regulations, Title 22, section 87101(m). A resident with mild cognitive impairment is not considered to have dementia; therefore, the requirements in California Code of Regulations, Title 22, section 87705, Care of Persons with Dementia, do not apply.

The licensee must meet the requirements in California Code of Regulations, Title 22, section 87705, Care of Persons with Dementia, for any resident diagnosed by a physician as having dementia, regardless of whether it is a primary or secondary diagnosis. In addition to the requirements in California Code of Regulations, Title 22, section 87705, licensees who advertise, promote or otherwise hold themselves out as

**POLICY (continued)**

providing special care, programming, and/or environments for residents with dementia or related disorders shall also meet the specified requirements in California Code of Regulations, Title 22, section 87706 (Advertising Dementia Special Care, Programming, and Environments) and section 87707 (Training Requirements if Advertising Dementia Special Care, Programming, and Environments). Licensees of a residential care facility for the elderly who accept residents diagnosed with dementia are not required to have a special program for dementia if the licensees do not advertise, promote or otherwise hold themselves out as providing special care, programming, and/or environments for residents with dementia.

**PROCEDURE**

Review the residents' physician reports to determine if any residents have been diagnosed with dementia. The "Physician's Report for Residential Care Facilities for the Elderly" (LIC 602A) may be used to determine whether the requirements in California Code of Regulations, Title 22, section 87705 apply, since the form has an explanation of both dementia and mild cognitive impairment and has boxes that the physician may check for those diagnoses. If the licensee does not use the "Physician's Report for Residential Care Facilities for the Elderly," review the documentation from the physician in the residents' files to determine if any residents have a diagnosis of dementia. Residents must be regularly observed for changes in behavior, as required in California Code of Regulations, Title 22, section 87466, Observation of the Resident, and must be reappraised on an ongoing basis, as required in California Code of Regulations, Title 22, section 87463, Reappraisals. If a resident displays behaviors such as wandering or elopement attempts, the licensee shall follow the requirements outlined in California Code of Regulations, Title 22, section 87705(k)(7), and facilitate the resident's reassessment by his or her primary care physician or medical specialist, such as a geriatrician or a neurologist, as the resident may have a newly identified diagnosis of dementia.

**(b)      POLICY**

A licensee does not have to have a special dementia program or environment, such as a memory unit or dementia wing, in order to accept or retain residents diagnosed with dementia. Some facilities do not have special units, and persons diagnosed with dementia live with other residents in the general community. The licensee must be able to meet the resident's needs and comply with regulatory requirements when caring for persons with dementia. This is required regardless of the resident's diagnosis and where the resident lives in a facility. Meeting residents' needs may include annual appraisals, physical plant enhancements like delayed egress, locked perimeters and auditory alarms if wandering or other behaviors are exhibited. This is not an exhaustive list, but these are common examples. A licensee may have a resident who is not diagnosed specifically

**POLICY (continued)**

with dementia, yet has wandering behavior. The licensee would need to assess the resident and develop a care plan for that behavior to ensure that the resident's care and supervision needs are met.

**PROCEDURE**

If a licensee accepts or retains residents diagnosed by a physician to have dementia, then the licensing program analyst must ensure that the licensee meets all of the requirements in California Code of Regulations, Title, section 87705. In addition, the licensee must meet the plan of operation requirements in California Code of Regulations, Title 22, section 87208. A licensee who advertises or promotes dementia special care, programming or environments shall include additional information in the plan of operation as specified in California Code of Regulations, Title 22, section 87706(a)(2). This includes a description of the physical environment, including environmental factors that ensure a safe, secure, familiar and consistent environment for residents with dementia as specified in California Code of Regulations, Title 22, section 87706(a)(2)(H).

**(b)(1)      POLICY**

Changes in the resident's behavior and condition, including changes caused by the overuse of psychoactive medications, may fundamentally alter treatment plans and medication regimens. The resident's physician, family members, responsible persons, and/or conservator, if any, may be able to provide insight on some behavioral changes and should be informed when a resident's behavior or condition changes. Some changes may impact the licensee's ability to care for a resident and there may be a need to consider another living arrangement.

**(b)(2)      POLICY**

Licensees shall have safety measures to address behaviors such as wandering. See Regulation Interpretations and Procedures section 87705(k)(7) pertaining to residents who wander and section 87705(j) pertaining to staff alert features to monitor exits if exiting presents a hazard to any resident. Wandering often accompanies "sundowning." Health and Safety Code Section 1569.2 added the term "sundowning" to the list of definitions. "Sundowning" is defined as a condition in which persons with cognitive impairment experience recurring confusion, disorientation, and increasing levels of agitation that typically coincide with the onset of late afternoon and evening.

**(b)(2)      PROCEDURE**

In conducting preadmission appraisals for residents who have dementia, licensees should inquire about sundowning behavior. If sundowning behavior exists, not only does the facility need to meet the safety needs of the resident, but the activities and supervision needs of the resident must also be met. This may require additional awake staff for the nocturnal shift.

**(c)(1)      POLICY**

A licensee cannot rely on a resident's ability to cognitively respond to emergencies if he/she requires lengthy verbal prompts or coaching. This is not realistic in emergency situations. If a resident cannot respond to verbal prompting in a timely manner, the resident will need staff assistance to safely respond to emergency situations.

**(c)(2)      POLICY**

For residents with dementia, particularly those who would need assistance leaving the building in an emergency, the Emergency Disaster Plan is a crucial element for resident safety. This plan is particularly important in facilities using delayed egress devices, locked perimeter fence gates or locked exterior doors. Licensees are encouraged to plan for the evacuation needs of all residents, especially those who will require additional staff assistance.

**(c)(3)      PROCEDURE**

The licensee shall maintain documentation pertaining to staff training in the personnel records, as specified in California Code of Regulations, Title 22, Section 87412(c)(2). For on-the-job training, such as the requirements in this section and in California Code of Regulations, Title 22, Section 87411(d), documentation shall consist of a statement or notation, made by the trainer, of the content covered in the training. There are additional training requirements in California Code of Regulations, Title 22, Section 87707, for licensees who advertise dementia special care, programming and/or environments, which also need to be properly documented as having been met by direct care staff.

Licensees are responsible for identifying residents' needs and the skills that direct care staff must have to meet those needs. Further, they must ensure that their training plans develop and maintain those skills. For example, it would be beneficial for licensees to provide training on how to properly care for and supervise residents who tend to wander or who exhibit sundowning behavior if residents in the facility have a propensity for this type of behavior.

**(c)(3)(C)      POLICY**

Prescription and nonprescription medications can alter the manifestations of dementia, and facility staff must be able to identify and report those effects. Without the explicit instructions of the prescribing physician(s), facility staff cannot alter prescription medication regimens.

**(c)(5)      PROCEDURE**

Assessment and reassessment procedures must successfully identify residents' needs. Refer to the following regulation sections from the California Code of Regulations, Title 22, for additional information: section 87457, Pre-Admission Appraisal; section 87705(c)(4) pertaining to adequate staffing; section 87466, which requires licensees to observe and respond to residents' changing needs; section 87461, which requires mental status assessments; and section 87463 on reappraisals.

**(c)(5)(A)      POLICY**

When a resident exhibits changes, such as deterioration of mental ability or a physical health condition, the licensee shall ensure that such changes are documented and brought to the attention of the resident's physician and the resident's responsible person, if any. Changes observed and reported by facility staff may fundamentally alter treatment plans and medication regimens.

**(c)(7)      POLICY**

Activity programs must be appropriate for persons with dementia. Licensees who need assistance in developing activity programs may seek the assistance of experts in dementia care, including the local chapter of the Alzheimer's Association. California Code of Regulations, Title 22, Section 87706(a)(2)(E) provides examples of activities to consider for residents with dementia, as well as a listing of items to consider when determining appropriate activities for these individuals. For example, if a facility has residents with sundowning behavior, it would be beneficial to have activities available to decrease the effects of that behavior, including, but not limited to, increasing outdoor activities in appropriate weather conditions and possibly including some type of night time activities.

If a facility admits or retains a resident with sundowning behavior, sufficient staff to care for and supervise the resident's behavior is required. If a resident is awake during night time hours, appropriate activities shall be available to meet the specific needs of the resident.

**(d)      POLICY**

The need for a facility to meet the physical plant requirements should be based upon resident actions and behaviors rather than solely on diagnosis. Facilities that care for residents with dementia may be flexible in the use of alternative concepts, procedures, techniques, equipment and space.

Licensees who advertise, promote, or otherwise hold themselves out as special care, programming, and/or environments for residents with dementia or related disorders must also meet the requirements in California Code of Regulations, Title 22, section 87706(a)(2)(H), in addition to the physical plant requirements in California Code of Regulations, Title 22, Sections 87705(d), (e), (f), (h) and (j).

**(e)      POLICY**

California Code of Regulations, Title 22, section 87307(e) specifies that facilities providing services to residents who have physical or mental disabilities shall assure the inaccessibility of fishponds, wading pools, hot tubs, swimming pools, or similar bodies of water, when not in active use by residents, through fencing, covering or other means. In addition, there must be adequate staffing to directly oversee the health and safety of all residents.

**(f)      POLICY**

See California Code of Regulations, Title 22, section 87309 pertaining to storage space.

The licensee must ensure that any items available for the use of independently functioning individuals do not place other residents at risk. There is always the danger that residents can wander into other individual's rooms.

**(g) and (g)(1)      POLICY**

The intent of this regulation is not to deny residents access to owned personal grooming and hygiene products such as liquid soap, shampoo, mouthwash, toothpaste, deodorant, perfume and fingernail polish. As specified in California Code of Regulation, Title 22, section 87468(a)(12), residents have the personal right to use their own personal possessions, including toilet articles. Just because a resident is diagnosed with dementia does not mean that he/she will try to ingest these personal grooming and hygiene items.

Residents should be allowed access to personal grooming and hygiene items unless there is documentation from the resident's physician that the resident is at risk if allowed direct access to personal grooming and hygiene products. The goal is to maximize the residents' independence while ensuring the health and safety of the residents.

**(g) and (g)(1)      PROCEDURE**

The licensee may be required to have a resident reassessed for the ability to safely access personal grooming/hygiene items if incident reports, review of facility notes, or resident observation indicate the need. Residents who are determined to be unable to manage their own personal grooming/hygiene items should not have access to the grooming items of other residents. Whether or not a dementia diagnosis exists, if a Physician's Report indicates that an individual in the facility has mild cognitive impairment, it is especially important for the licensee and direct care staff to continuously observe and reappraise the resident for behavioral changes and make corresponding changes in the care and supervision provided to that resident.

**(h)      PROCEDURE**

When assessing a facility's need to enclose an area with a fence or wall to protect he residents' safety, review the actual or intended use of the space as described in the plan of operation to see if it will be used for residents' recreation and leisure.

A fence or wall may not be necessary if an area is already completely enclosed. For example, if a facility has a totally enclosed central courtyard design, the courtyard would not need fencing as long as it is sufficiently secured. In this example, "totally enclosed courtyard" and "sufficiently secured" refers to outdoor areas with no access to the greater outdoors. California Code of Regulations, Title 22, section 87705(1) was written as a result of Health and Safety Code Section 1569.698 (Building standards; adoption; locked and secured perimeters in residential care facilities; persons with dementia), whereby the term "secured perimeters" means "locked exterior doors" or "perimeter fence gates."

In some cases, the front of a facility is a driveway or parking lot. If this area is not intended for resident use, it need not be fenced, provided that any door(s) leading to this area is monitored, as specified in California Code of Regulations, Title 22, section 87705(j), or the exit is locked and meets the requirements in California Code of Regulations, Title 22, sections 87705(1)(1) – (6). Some outdoor areas, such as the sides of a building, do not need to be fenced if the areas are not directly accessible from inside the building and are not intended for resident use.

Outdoor facility space that does not appear to be used for recreation and leisure might in fact be used by residents for this purpose. For example, facilities may have front porches or patios with benches, tables and chairs that may be used as areas where residents can talk, relax, play games or work on projects. If the area(s) is intended for resident use, the space must meet the requirements in California Code of Regulations, Title 22, section 87705(h). Areas not intended for residents' use, or not actually used by residents, do not

**(h)      PROCEDURE (Continued)**

need fencing. Outdoor facility space used for the residents' recreation and leisure may be allowed, even if it is not completely enclosed by a fence with self-closing latches and gates, or walls, provided that the licensee submits an exception request to Licensing with an alternative plan that sufficiently protects resident safety. Licensing must approve this plan.

It is important for facility staff to constantly monitor the length of time any resident has been outside and to encourage the use of products and clothing to provide protection against the sun, hot or cold weather, and other elements. In some instance, it may not be reasonable for any resident to be outside due to extreme and/or potentially dangerous weather. Also, some medications can cause eye and skin reactions due to exposure to sunlight.

**(i)      POLICY**

Community Care Licensing Division approval is not required for wrist bands or other egress alert devices worn by the resident. The prior written consent of the resident or his/her conservator is required, and the device shall not violate the personal rights specified in California Code of Regulations, Title 22, section 87468.

Just because residents have dementia does not mean that they are not able to consent to the use of egress alert devices. Probate Code section 4657 states that a person is presumed to be capable to make his or her own health care decisions unless he/she is conserved. A responsible person who is not the resident's conservator has no legal authority to consent to the use of an egress alert device.

Probate Code section 1801(a) specifies that a "conservator of the person" may be appointed by the court for a "person who is unable to provide properly for his or her personal needs". It is advisable for a resident with dementia to have a conservator. This may protect the resident over the term of the disease process. The legislature has indeed suggested that people with dementia should have a conservatorship to serve their unique and special needs, as specified in Probate Code section 2356.5(A)(1). Conservatorship is granted by the court and subject to review before and after it is granted. Note also that a "conservator of the estate," or rather a conservator appointed by the court to handle a person's financial affairs, does not have the authority to make medical decisions on behalf of the person, even though he or she is a legally appointed conservator.

The Department asserts that additional protections are warranted for residents wearing egress alert devices because these devices are such a substantial interference with the resident's personal rights. That is why consent to the use of such devices can only come from the residents themselves or their duly appointed legal conservator.

**(i)      POLICY (Continued)**

California Probate Code section 4605 allows a person to prepare an Advance Health Care Directive, which is defined as either a written or oral health care instruction to one's physician, or a Durable Power of Attorney for Health Care, which is a written instrument designating an agent to make health care decisions on that person's behalf.

Probate Code section 4671(1) provides authority for personal care decisions to be included in a Durable Power of Attorney for Health Care. However, it is unlikely for personal care decisions to be included as most powers of attorney are executed on forms that do not include that specific authority. In the unusual situation where the Durable Power of Attorney for Health Care gives the agent the authority to make personal care decisions such as what the resident will wear, including wrist bands, the licensee may request an exception to California Code of Regulations, Title 22, section 87705(i) in order to allow the agent, as opposed to only the resident or the conservator, make that decision. Residents without capacity to consent to wearing egress devices also lack capacity to sign a power of attorney.

**PROCEDURE**

In the unusual situation where a Durable Power of Attorney for Health Care gives the agent the authority to make other kinds of decisions, such as those concerning personal rights such as what the resident will wear (including wrist bands), the licensee may request an exception to California Code of Regulations, Title 22, section 87705(i), which restricts this authority to the resident or the conservator. If such an exception is requested, the licensing program analyst must contact a staff attorney for assistance on each resident's particular case. A legal consult includes, but is not limited to, verification that the Durable Power of Attorney for Health Care meets all of the following conditions:

- The Durable Power of Attorney for Health Care was signed before admission to the facility.
- If only effective upon the incapacity of the resident, incapacity was determined by the primary physician.
- The determination of incapacity was made prior to admission in the facility.
- The Durable Power of Attorney for Health Care specifically authorizes the agent to make personal care decisions.
- Personal care decisions include what the resident will wear.

If all the above conditions are met, a staff attorney will most likely recommend granting an exception to California Code of Regulations, Title 22, section 87705(i).

For additional information, refer to the chart in the Evaluator Manual's Regulation Interpretations and Procedures section 87705(l)(4), entitled, "Who Can Consent For Residents Diagnosed With Dementia Who Are Residing In A Residential Care Facility for the Elderly"?

**(j)      POLICY**

Auditory devices or other staff alert features to monitor exits, including pressure sensitive mats, are intended to function as a secondary means of alerting staff of a possible unsupervised exit. These devices are not intended to substitute for continuous resident monitoring and supervision. The requirement for the licensee to have an auditory device or other staff alert feature to monitor exits, if exiting presents a hazard to any resident, is to be enforced based on the behavior of the resident. Even though this requirement is in the section of the regulations pertaining to care of persons with dementia, California Code of Regulations, Title 22, section 87208(a)(11) specifies that if the licensee intends to admit and/or specialize in care for one or more residents who have a documented history of behaviors that may result in harm to self or others, the facility plan of operation shall include a description of precautions that will be taken to protect that resident and all other residents. Also, California Code of Regulations, Title 22, section 87211 requires that each licensee furnish to the licensing agency reports of any incident that threatens the welfare, safety or health of any resident, or unexplained absence of any resident. A resident who wanders will need to be reassessed as required in California Code of Regulations, Title 22, section 87463. See Regulation Interpretations and Procedures section 87705(k) pertaining to incidents in which a resident wanders away from the facility unsupervised.

**PROCEDURE**

When evaluating a facility, the exterior door(s) or gate(s) should be tested not only for operation, but also for responsiveness of staff. Inattentiveness to auditory devices or staff alert features may indicate inadequate staffing levels or inadequate staff training to care for persons with dementia if exiting presents a hazard.

It is not necessary to require auditory devices or staff alert features on doors or gates leading to “enclosed courtyards” or “secured yards” if there are safeguards in place to ensure resident safety. In this example, “enclosed courtyards” refers to areas without access to the greater outdoors. “Secured yards” refers to enclosed areas without gates or with locked gates. California Code of Regulations, Title 22, section 87705(l) was written as a result of Health and Safety Code Section 1569.698 (Building standards; adoption; locked and secured perimeters in residential care facilities; persons with dementia), whereby the term “secured perimeters” means “locked exterior doors” or “perimeter fence gates.” The licensee is still responsible for care and supervision when residents are outdoors in these “secured” areas. A resident could go into a secured outdoor area and be exposed to hot or cold weather, or wander into this area at night unnoticed.

California Code of Regulations, Title 22, section 87705(b)(2) requires the plan of operation to address the needs of residents with dementia, including safety measures to

**(j)      PROCEDURE (Continued)**

address behaviors such as wandering. Also, the California Code of Regulations, Title 22, section 87208 requires the plan of operation to contain the staffing plan. Licensing program analysts must review the plan of operation to make sure that safeguards are in place for residents that wander. They can review the Physician's Report for Residential Care Facilities for the Elderly (LIC 602A) to see if the physician marked the box indicating a resident wanders, (under "Mental Condition"). The licensee must protect the health and safety of any resident who may wander, even if that person has not been diagnosed as having dementia. If safeguards are in place and operable, the licensee does not have to obtain a waiver to lock exterior doors and does not have to install delayed egress devices on exterior doors or perimeter fence gates. In other words, the licensee must show how he/she will ensure that residents who cannot go out unsupervised are not exiting undetected by staff. In addition, the licensee does not have to meet the requirements in California Code of Regulations, Title 22, sections 87706 and 87707, unless the licensee is advertising, promoting, or otherwise holding him/herself out as providing special care, programming, and environments for residents with dementia or related disorders.

An alert device may be needed even if a facility has locks on a gate. A facility may be on a busy street and the gardener or other employees may have keys to the gate lock, but they may not always lock the gate. If exiting presents a hazard to any resident diagnosed as having dementia, such as in this example, a staff alert feature would be needed even though the gate has a lock.

If exiting presents a hazard to any resident, windows may need auditory devices or other staff alert features. If a resident with dementia has a room on an upper level of a building with a large window that can be opened, then this regulation would apply. If a window leads to any area that is dangerous and not a secured area, then there must be an auditory device or other staff alert feature unless the fire marshal approves locking the window or sliding glass door. Health and Safety Code section 1569.6991 specifies that no security window bars may be installed or maintained on any residential care facility for the elderly unless the security window bars meet current state and local requirements, as applicable, for security window bars and safety release devices.

**(k)      POLICY**

Technical specifications for egress-control devices of the time-delay type are in Health and Safety Code section 1569.699.

**PROCEDURE**

Facilities with delayed egress devices on exterior doors or perimeter fence gates may be permitted to install locks [with an approved waiver to California Code of Regulations,

**(k)      PROCEDURE (Continued)**

Title 22, Section 87468(a)(6), Personal Rights]. However, the local fire jurisdiction has exclusive authority to determine conformance to Health and Safety Code sections 1569.698, pertaining to locked and secured perimeters in residential care facilities and persons with dementia, and 1569.699, pertaining to exit doors, fences, and egress-control devices of the time-delay type. Health and Safety Code section 1569.698(d) states in part: ..“ residential care facilities for the elderly that accept or retain as residents persons with dementia, and that choose to utilize the security options of egress-control devices of the time-delay type in addition to secured perimeter fences or locked exit doors, shall comply with Health and Safety Code section 1569.699, or regulations adopted by the State Building Standards Commission, whichever is operative.”

**(k)(2)      PROCEDURE**

Local fire jurisdictions have the exclusive authority to determine if delayed egress devices conform to Health and Safety Code section 1569.699. Suspected fire safety violations must be reported to the local fire jurisdiction that has granted the most current fire clearance to the facility. Appropriate enforcement and follow-up action by the Community Care Licensing Division must be taken.

Fire clearances are essential for the protection of resident life and fire safety. Each facility determines the ambulatory status of the population to be served. This may include persons who are ambulatory, nonambulatory or bedridden. This may also include a combination of any of the above. Local fire jurisdiction inspectors will conduct facility-wide inspections based on the information provided by the licensee. For example, if a licensee wishes to have delayed egress devices, this will need to be approved by the local fire jurisdiction inspector. If a facility wishes to care for persons who are bedridden, this too will need to be reviewed by the local fire jurisdiction inspector. The local fire jurisdiction determines whether or not a facility has met the conditions necessary for the licensee-requested fire clearance. A facility is not licensed until an appropriate fire clearance has been obtained by the licensee. Any time a licensee wishes to change the ambulatory status of the population served specific to nonambulatory or bedridden, a new fire inspection request must be initiated.

**(k)(5)-(6)      POLICY**

Licensees' responsibilities do not end when residents leave the premises. Licensees must continue to ensure the protection of residents from safety hazards or personal discomfort, including adverse weather conditions. When staff escort residents with dementia who wander away from the facility, residents who remain at the facility must also be supervised.

**(k)(5)-(6)      PROCEDURE**

Facility staff must monitor the length of time any resident has been outside and encourage the use of products and clothing to provide protection against the sun, hot or cold weather, and other elements. In some instances, it may not be reasonable for any resident to be outside due to extreme and/or potentially dangerous weather. Also, some medications can cause eye and skin reactions due to exposure to sunlight.

**(k)(7)      PROCEDURE**

If residents who have been diagnosed by a physician to have dementia elope from a facility, licensees must report each incident to the Community Care Licensing Division and to the resident's conservator and/or other responsible person, if any, and to any family member who has requested notification. Reports to Emergency Services, such as 911 should also be made in the event of wandering or elopement events. Frequent reports might suggest the need for fundamental changes in the plan of operation, staff-to-resident ratios, or acceptance and retention criteria. The licensee may also consider the use of egress alert devices worn by the resident with the prior written approval of the resident or conservator, provided that such devices do not violate the resident's personal rights specified in California Code of Regulations, Title 22, section 87468, Personal Rights. Auditory or other staff alert features can be used, including pressure sensitive mats. The use of a wander guard may be considered. California Code of Regulations, Title 22, section 87705(j) requires the licensee to have an auditory device or other staff alert feature to monitor exits if exiting presents a hazard to any resident who is diagnosed by a physician to have dementia. See Regulation Interpretations and Procedures section 87705(j) pertaining to staff alert features to monitor exits if exiting presents a hazard to any resident.

**(k)(8)      POLICY**

Minimum staff ratios are not specified, but licensees must ensure that a sufficient number of staff are available to meet residents' care and supervision needs, even if staff are required to escort residents with dementia who wander away from the facility. There must be an adequate number of direct care staff to support each resident's physical, social, emotional, safety and health care needs as identified in his/her current appraisal. The licensee must relocate the resident if he/she cannot meet his/her needs by having adequate staffing.

Delayed egress devices, locked perimeter fence gates, and locked exit doors are not substitutes for trained staff providing direct care and supervision. They assist staff in protecting residents from hazards and discomfort.

**(1)      POLICY**

Facilities with locks on exterior doors or secured perimeter fence gates may be permitted to install delayed egress devices or locks on perimeter fence gates. Health and Safety Code section 1569.698(d) states that licensees of residential care facilities for the elderly who accept or retain as residents persons with dementia, and that choose to utilize the security options of egress-control devices of the time-delay type in addition to secured perimeter fences or locked exit doors, shall comply with Health and Safety Code section 1569.699, or regulations adopted by the State Building Standards Commission, whichever is operative. However, the local fire jurisdictions have the exclusive authority to determine conformance with Health and Safety Code sections 1569.698, pertaining to locked and secured perimeters in residential care facilities and persons with dementia, and 1569.699, pertaining to exit doors, fences, and egress-control devices of the time-delay type.

**(1)(2)      PROCEDURE**

Local fire jurisdictions determine if locks on perimeter fence gates or on exterior doors conform to Health and Safety Code section 1569.698. Suspected fire safety violations must be reported to the local fire jurisdiction who has granted the most current fire clearance to the facility. Appropriate enforcement and follow-up action by the Community Care Licensing Division must be taken.

Fire clearances are essential for the protection of resident life and fire safety. Each facility determines the ambulatory status of the population to be served. This may include persons who are ambulatory, nonambulatory or bedridden. This may also include a combination of any of the above. Local fire jurisdiction inspectors conduct facility-wide inspections based on the information provided by the licensee. For example, if a licensee wishes to have locks on perimeter fence gates or on exterior doors, this will need to be approved by the local fire jurisdiction inspector. If a facility wishes to care for persons who are bedridden, this too will need to be reviewed by the local fire jurisdiction inspector. The local fire jurisdiction determines whether or not a facility has met the conditions necessary for the requested fire clearance. A facility is not licensed until an appropriate fire clearance has been obtained by the licensee. Any time a licensee wishes to change the ambulatory status of the population served specific to nonambulatory or bedridden, a new fire inspection request must be initiated.

**(1)(4)      PROCEDURE**

In facilities with locked exterior doors or locked perimeter fence gates, where residents with dementia reside, consent statements or voluntary admission statements are required for all residents. All residents must acknowledge that the facility has locks on perimeter fence gates or exterior doors and that their admission is voluntary, either by directly signing a written statement or through their conservators' written consent. No other person may give consent for admission to a facility with locked exterior doors or perimeter fence gates.

**(l)(4)      PROCEDURE (Continued)**

Just because residents have dementia does not mean that they are not able to understand a written statement, which they are required to sign in order to give up their personal rights to enter a locked facility or to wear egress alert devices. Probate Code 4657 states that a person is presumed to be capable to make his or her own health care decisions unless he/she is conserved. A responsible person who is not the resident's conservator has no legal authority to consent to having the resident in a locked facility or to the use of an egress alert device.

For additional information, refer to the Evaluator Manual's Regulation Interpretations and Procedures section 87705(i).

The chart on the following page may be used as a guide to help determine who can give consent, including the type of consent, for residents who have been diagnosed with dementia and who live in a residential care facility for the elderly:

**WHO CAN CONSENT FOR RESIDENTS DIAGNOSED WITH DEMENTIA WHO ARE RESIDING IN A RESIDENTIAL CARE FACILITY FOR THE ELDERLY?**

	Durable Power of Attorney	Advance Health Care Directive (formerly health care power of attorney)	Conservatorship	Responsible Persons
Definitions	A written instrument in which one person, the principal, appoints another person to act in place of or on behalf of the principal. [Probate Code § 4402] Most powers of attorney are for financial management and/or for personal care decisions.	A person's written or oral direction concerning a health care decision. [Probate Code § 4623]  "Power of Attorney for Health Care" means a written instrument designating an agent to make health care decisions. [Probate Code § 4629]	A conservator of the person may be appointed for a person who is unable to provide properly for his or her personal needs. [Probate Code § 1801(a)]	The term "responsible person" is only in CCL regulations, and means "that individual or individuals, including a relative, health care surrogate decision maker, or placement agency, who assists the resident in placement or assumes varying degrees of responsibility for the resident's well-being."
Legal Authority	Probate Code sections 4000-4545	Probate Code sections 4600-4805	Probate Code division 4, section 1400 et seq.	Title 22, CCR section 87101(r)(6)
Can consent for someone to be placed in a facility with secured perimeters?	No, pursuant to Health & Safety Code section 1569.698(f).	No, pursuant to Health & Safety Code section 1569.698(f).	Yes, with court approval.	No.
Can consent for someone to wear wrist bands or other resident egress alert devices?	No, unless certain conditions* are specifically met that warrant granting an exception.	No, unless certain conditions* are specifically met that warrant granting an exception.	Yes, with court approval.	No.
Can consent to hide or camouflage resident's medications in other substances?	No.	No.	Yes, only with specific court approval.	No.

**(1)(4)      PROCEDURE (Continued)**

**\*Conditions include:**

- 1) signed by resident prior to admission to the facility;
- 2) if only effective upon the incapacity of the resident, primary physician made determination of incapacity prior to admission to the facility;
- 3) agent is specifically authorized to make personal care decisions; and
- 4) personal care decisions include what the resident will wear.

**(1)(5)      POLICY**

Facilities with locked exterior doors must have safe interior and exterior space permitting unrestricted resident movement. California Code of Regulations, Title 22, section 87705(h) specifies that outdoor facility space used for resident recreation and leisure shall be completely enclosed by a fence, with self-closing latches and gates, or walls, to protect the safety of residents.

See the Evaluator Manual's Regulation Interpretations and Procedures section 87705(h).

**(1)(6)      POLICY**

Minimum staff ratios are not specified, but licensees must ensure that a sufficient number of staff are available to meet residents' care and supervision needs; even if staff are required to escort residents with dementia who wander away from the facility. There must be an adequate number of direct care staff to support each resident's physical, social, emotional, safety and health care needs as identified in his/her current appraisal. The licensee must relocate the resident if he/she cannot meet his/her needs by having adequate staffing.

## ARTICLE 13. ENFORCEMENT

**87755 INSPECTION AUTHORITY OF THE LICENSING AGENCY**

**87755**

(a) **POLICY**

Health and Safety Code Section 1569.32 authorizes the licensing agency to inspect any licensed or unlicensed premises providing personal care, supervision and services. This includes the authority to enter and inspect the entire premises (inside and outside). However, it is the division's policy to inspect licensee and staff living quarters at the time of initial licensure only when there is reason to believe there are health or safety hazards that would threaten residents. Typically, an analyst will glance at or quickly scan licensee and staff living quarters for obvious health and safety hazards. If any such hazards are evident, a more thorough inspection is necessary. Also, an analyst is required to inspect licensee and staff living quarters in the event of a relevant complaint (e.g., staff member's room is unsanitary). Refer to Health and Safety Code Section 1569.35(c) and Reference Material Section 3-2300.

Health and Safety Code Section 1569.36 requires Community Care Licensing Division agencies to inform specified persons and/or agencies of any substantiated complaints against a facility involving certain types of licensing deficiencies. Under this law, the licensing agency is also responsible for providing all residential care facilities for the elderly with the name and address of the state ombudsman and, where applicable, the local ombudsman.

**Refer to the Communications Agreement between the California Department of Social Services and the State Department of Aging (see Evaluator Manual Appendix) for agreements regarding reporting responsibilities with the Long-Term Care Ombudsman. This Communications Agreement meets the intent of Health and Safety Code Section 1569.36.**

In all cases when it is requested, licensing agencies will notify the resident's authorized representative(s) of any substantiated complaint against a facility. Even if it is not requested, licensing agencies may elect to notify authorized representative(s) of substantiated complaints.

Licensing agencies are to give priority to complaints referred by ombudsmen, although complaints that allege an immediate threat to resident health and safety will be given first priority regardless of complainant.

## PROCEDURE

See Reference Material Sections 2-6500 and 3-3000.

(a) **POLICY**

An evaluation visit will be made to each facility once each year. Except for prelicensing visits, all evaluation visits will be unannounced unless approved otherwise by the licensing supervisor.

To ensure the health and safety of residents, it may be necessary to interview residents and/or their “responsible person” (authorized representative), staff and other persons, as appropriate, in addition to the licensee/administrator.

Analysts should have a complete knowledge and understanding of licensing laws and regulations prior to attempting any evaluation.

A Facility Evaluation Report (LIC 809) is to be completed for each site visit during which an evaluation is done. (See Regulation Interpretations Sections 87756(c-e) and 87759).

**PROCEDURE**

Before making a field visit, review the facility case file to determine if required documents or information are lacking or need to be updated. It is important to ensure that required criminal record clearances and fire clearances are current. Prior to any complaint visit, the facility file should be reviewed and the number of substantiated complaints noted (See Regulation Interpretations Section 87755). Any records that are not confidential and may be helpful should be photocopied and added to the field folder.

**NOTE:** Any confidential records are not to be shared with any individual other than the affected person(s). (See Reference Material Section 2-6500.)

Upon arriving at a licensed facility and finding no one on the premises, **do not leave a Facility Evaluation Report (LIC 809) at the facility.** Note on the Weekly Itinerary (LIC 981) that the visit was not completed. Upon returning to the Regional Office, note the date and circumstances on the facility file Contact Sheet (LIC 185). Upon returning to the facility and making contact with the licensee/administrator, note the previous attempt to visit in the opening statement of the LIC 809.

Sometimes it is advisable to make a site visit accompanied by another person, such as another analyst, the licensing supervisor, a nurse, an auditor, an investigator or a placement worker. These occasions are determined by the nature of the visit, the time of the visit, the type of the facility, or even the general attitude of the licensee/administrator toward the analyst or the agency. It is strongly recommended that visits made during other than normal working hours be made by an analyst team.

**PROCEDURE (continued)**

If a licensee/administrator denies access to the facility after proper identification is presented and the reason for the visit is explained, leave the premises, document the denial on the LIC 809, and mail a copy of the LIC 809 to the licensee informing him/her that denial of access is a violation of law (Health and Safety Code Section 1569.32, 1569.33 or 1569.35, as appropriate). Discuss with the licensing supervisor the need for an office conference with the licensee.

If allowed to enter the facility, contact the person in charge and explain the reason for the site visit. It is recommended that the tour of the facility be made in the company of facility staff. Deficiencies can then be pointed out and a plan of correction discussed as deficiencies are identified. Do not hesitate to ask the facility representative to provide a time and place in which staff or residents may be interviewed in private.

Licensees must respect residents' rights to be treated with dignity and to have privacy. Licensing staff must recognize that licensees have the same rights. It is not necessary to use an overbearing manner when enforcing licensing regulations.

Date and initial any document(s) received from the licensee and note on the LIC 809 that the document(s) was obtained during the visit.

Use the Facility Review Regulation Index to ensure that an evaluation visit is completed. (See Reference Material Section 3-3400.)

If there is a potentially dangerous situation in or near a facility that could evolve into a verbal or physical assault, leave the facility immediately in the safest manner possible. Departmental policy and procedures on reporting any verbal or physical assault by a licensee, resident or other person against licensing staff are described in Information Release 17-82 (Evaluator Manual Appendix, Tab I).

When the site visit has been completed, conduct an exit interview with the licensee/administrator or, if the licensee/administrator is not present, the person in charge of the facility. [See Regulation and Regulation Interpretations Section 87756(c-e.)]

**Deficiencies in Compliance****(b)****POLICY**

Health and Safety Code Section 1569.38 has been implemented without regulations. Specifically, it requires:

Each residential care facility for the elderly shall place in a conspicuous place copies of all licensing reports issued by the department within the preceding 12 months, and all licensing reports issued by the department resulting from the most

**PROCEDURE (Continued)**

recent annual visit of the department to the facility. This subdivision shall not apply to any portion of a licensing report referring to a complaint that was found by the department to be unfounded or unsubstantiated. The facility, during the admission process, shall inform the resident and the resident's responsible person in writing that licensing reports are available for review at the facility, and that copies of licensing reports and other documents pertaining to the facility are available from the appropriate district [regional] office of the department. The facility shall provide the telephone number and address of the appropriate district [regional] office.

**PROCEDURE**

Cite Health and Safety Code Section 1569.38 if a violation of this law is documented.

(d)

**POLICY**

It is expected that the Facility Evaluation Report (LIC 809) or the Complaint Investigation Report (LIC 9099) will be completed in the field at the conclusion of the evaluation visit. Exceptions to this could occur if, for example, the inspection becomes lengthy and complex and extends beyond normal working hours--or if there is uncertainty about whether a violation should be cited as a deficiency or a serious deficiency, and consultation with a licensing supervisor is necessary.

**PROCEDURE**

If a full report of the evaluation visit on the LIC 809 or the LIC 9099 cannot be prepared by the end of the visit, prepare an LIC 809 or LIC 9099 that states the date and purpose of the visit, is signed by the licensee/administrator (or designee), and clearly documents that:

1. Deficiencies were discussed during the exit interview.
2. An appointment will be made to review the report and determine a plan of correction either at the facility or at the Regional Office. (An attempt should be made to schedule the appointment no more than two working days after the date of the evaluation visit.)

Discuss the following during all exit interviews:

1. Deficiencies observed, noted and cited on the LIC 809 or the LIC 9099.
2. The plan for correcting any deficiencies, including due dates, and, if necessary, interim steps for completing each part of the plan.

**PROCEDURE (continued)**

3. The civil penalties process and the licensee's appeal rights. (See Regulation Section 87455 and Reference Material Section 1-0040, Civil Penalties.)

If a facility has deficiencies that could pose an immediate threat to residents' health and safety (e.g., a jagged, broken window is observed in an area frequently used by residents), remain on the premises until any dangerous conditions can be corrected.

The LIC 809 and the LIC 9099 are used for documenting site visits. The LIC 809 is also used for documenting civil penalties and office visits. The LIC 809 and the LIC 9099 are both signed by the licensee/administrator (or designee) and the analyst. The original of a completed form is kept on file by the Regional Office, a copy is given to the facility, and another copy is kept by the Regional Office to reproduce for mailing to other public agencies or entities upon request (e.g., local ombudsmen).

See Reference Material Sections 3-3100 through 3400.

**(e)(1)      POLICY**

Cite the most appropriate licensing regulation or law on the Facility Evaluation Report (LIC 809) or the Complaint Investigation Report (LIC 9099).

**PROCEDURE**

Complete the top section on the first page of the LIC 809 or the LIC 9099. This includes the time spent entering and exiting the facility and the address and telephone number of the licensing agency. It is important that the top section be completed. The additional pages need the facility name, the date and the page reference.

Clearly number and separate each deficiency. This ensures that there will be a clear reference to the violation when either issuing a citation or securing a plan of correction. After numbering the deficiency, indicate the regulation section number being cited. After the regulation reference, describe the deficiency with reasonable specifics--who, what, where and to what extent. If citing multiple deficiencies that pertain to the same regulation, group them together rather than document each one separately. When grouping together a number of deficiencies that apply to a section and its subsections, identify each subsection.

Discuss and develop a reasonable plan of correction with the licensee/administrator. Ensure that a clear explanation of how and when each deficiency will be corrected is legibly written on the right-hand portion of the LIC 809 directly across from the deficiency being cited.

See Reference Material Sections 3-2340 and 3-3100 through 3-3300.

**(e)(4)(A)(1)****POLICY**

A serious deficiency is defined in Regulation Section 87101(s)(1) as a “deficiency that presents an immediate or substantial threat to the physical health, mental health, or safety of the residents or clients of a community care facility.” Regulation Section 87758 lists examples of key regulations that may result in a serious deficiency citation. That list is not conclusive, and lack of compliance with any of those regulations does not automatically result in a serious deficiency citation. However, noncompliance with any of those regulations listed will **generally** indicate the existence of a threat to the health and safety of residents commensurate to a serious deficiency and should be so cited.

Further, lack of compliance with Regulation Section 87355, relating to criminal record clearance, and Regulation Section 87202, relating to fire clearance, will always be cited as **serious deficiencies**. These two requirements are essential to ensuring the provision of adequate and safe care to residents.

**PROCEDURE**

After identifying a deficiency, write the deficiency on the Facility Evaluation Report (LIC 809). (See Reference Material Sections 3-2010, 3-3010, 3-3120 and 3-3400.) All Type A and Type B deficiencies are to be included on the LIC 809, indicating whether or not correction was made at the time of the visit. It is recommended that the deficiencies be noted on the Detail Supportive Information (LIC 812) for reference. (See Reference Material Section 1-0000, Enforcement Actions.)

**(e)(4)(B)****POLICY**

After considering the factors identified in Regulation Sections 87756(e)(4)(A)(1) through (4), it may be necessary to establish interim corrective steps in order to achieve a fair and reasonable final correction due date.

The licensee may request an administrative review of the penalty notice visit or the follow-up penalty assessed visit (see Regulation Section 87763). As a result of this review, the Regional Manager (or designee of a higher staff level than an analyst) may amend, extend the due date, retain or dismiss the penalty. The analyst is not authorized to make these decisions. Such a request should be made in writing within ten days of receipt of the Facility Evaluation Report (LIC 809) or the Civil Penalty Assessment—Licensed Facility (LIC 421). The Penalty Review (LIC 178) is sent to the licensee as official notification of the administrative review.

**PROCEDURE**

There will be occasions when, because of the deficiency cited, the licensee will be unable to provide an immediate plan of correction. For example, a tour of the facility reveals that the roof is leaking. The licensee states that he/she cannot provide a plan of correction date before talking to a contractor. A possible interim plan of correction would be to require the facility to secure a contractor and specify a reasonable completion date within ten days.

The more specific the plan of correction, the easier it is to jointly identify a reasonable correction date and the less chance there is for any misunderstanding during the return visit to determine if the deficiency has been corrected.

**(e)(5)****POLICY**

Licensing regulations require that a notice of deficiency be issued during the licensing visit when civil penalties are involved. In preparing the notice, state the following on the Facility Evaluation Report (LIC 809): 1) whether the violation is a Type A or Type B serious deficiency; 2) the amount of the penalty if the deficiency is not corrected; and 3) the date the penalty is to begin.

Civil penalties are assessed for serious deficiencies (Type A or Type B) that are not corrected by the plan-of-correction date. A civil penalty of \$50 per violation is assessed up to a maximum of \$150 a day. (See Enforcement Section on Civil Penalties, Reference Material Section 1-0040.)

When possible, set common correction dates. When a single plan-of-correction date can be established, the following phrase may be used: "All deficiencies must be corrected by (the specific date) or be subject to a penalty of \$50 a day per violation," rather than write this information after each deficiency.

**87758      SERIOUS DEFICIENCIES - EXAMPLES****87758****(a)(1)****POLICY**

A violation of a criminal record regulation is always cited as a serious (Type A) deficiency.

**(a)(2)****POLICY**

A violation of a fire clearance regulation is always cited as a serious deficiency.

**87759      FOLLOW-UP VISITS TO DETERMINE COMPLIANCE      87759**

See Reference Material Section 1-0040, Enforcement.

**87761      PENALTIES      87761**

See Reference Material Section 1-0040, Enforcement.

See Reference Material Section 2-7000 for procedures on collection of civil penalties.

**87763      APPEAL PROCESS      87763**

**(b)      POLICY**

If a deficiency has not been corrected, civil penalties will continue to accrue during the review process.

The Regional Manager or designee will act as reviewer, and may amend, retain or dismiss the notice of deficiency and/or the notice of penalty. The correction date may also be extended. But granting an extension should be the exception; an extension should only be granted where there is evidence that correction delays are beyond the control of the licensee.

Upon completion of the review, a Penalty Review (LIC 178) is drafted that notifies the licensee of action taken on his/her appeal. A copy of the LIC 178 is kept in the facility file.

**ARTICLE 14. ADMINISTRATIVE ACTIONS – GENERAL**

**ARTICLE 15. ADMINISTRATOR CERTIFICATION TRAINING  
PROGRAMS – VENDOR INFORMATION**